

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTEN K WALKER
Claimant

APPEAL 22A-UI-06846-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHI LIVING COMMUNITIES
Claimant

**OC: 06/28/20
Claimant: Appellant (1R)**

Iowa Code § 96.6(2) – Timely Appeal
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1A(37) – Total, Partial, Temporary Unemployment
Iowa Code § 96.19(38) – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Admin. Code r. 871-24.22(2)i – On-Call Workers

STATEMENT OF THE CASE:

Kristen K Walker, the claimant/appellant, filed an appeal from the September 25, 2020, (reference 02) unemployment insurance (UI) decision that denied REGULAR (state) UI benefits as of June 28, 2020, because Ms. Walker was still employed in her on-call job in the same capacity as in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on May 2, 2022. Ms. Walker participated personally. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Walker's appeal filed on time?
Is Ms. Walker able to and available for work?
Is Ms. Walker temporarily or partially unemployed?
If so, is the employer's account subject to charge?
Is Ms. Walker an on-call employee?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to Ms. Walker at the correct address on September 25, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by October 5, 2020.

Ms. Walker received the decision in the mail. IWD had previously mailed Ms. Walker a different decision related to a different employer, OPCO Granger, IA, LLC, dba Granger Nursing and Rehab, finding Ms. Walker eligible for REGULAR (state) UI benefits as of June 28, 2020. Ms.

Walker mistakenly assumed that the reference 02 decision that denied benefits was not relevant because she had filed her claim due to reduced hours at Granger Nursing and Rehab and IWD concluded she was eligible for benefits connected to that employer.

IWD issued three additional decisions on March 10, 2022 finding Ms. Walker was overpaid REGULAR (state) UI benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, and Lost Wage Assistance Payment (LWAP) benefits. Ms. Walker received those decisions in the mail. Ms. Walker filed an appeal online on March 18, 2022. The appeal was received by the Appeals Bureau of Iowa Workforce Development on March 18, 2022. IWD set up appeals for the three overpayment decisions and the September 25, 2020, (reference 02) decision.

Ms. Walker applied for Pandemic Unemployment Assistance (PUA) benefits on June 30, 2020. IWD has not issued a decision on Ms. Walker's PUA eligibility.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Walker's appeal of the reference 02 decision was not filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.”

Iowa Admin. Code r. 871-24.35(1) provides:

2. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (2) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

Ms. Walker received the reference 01 decision before the deadline and, therefore, could have filed an appeal on the appeal deadline. The notice provision of the decision was valid. Ms. Walker's delay in filing her appeal was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay in filing his appeal. Ms. Walker's appeal of the reference 02 decision was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

Ms. Walker's appeal of the reference 02 decision was not filed on time. The September 25, 2020, (reference 02) decision is AFFIRMED.

REMAND:

This matter is REMANDED (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision on Ms. Walker's PUA application.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 13, 2022

Decision Dated and Mailed

dz/ac

NOTE TO MS. WALKER:

- You can check on your PUA application by contacting IWD online, via email, or by phone.
 - Online: Go to www.iowaworkforce.gov, click on "Contact Us" then click on "Unemployment Help Request" and complete the form.
 - Email: uiclaimshelp@iwd.iowa.gov
 - Phone: 1-866-239-0843

- If you disagree with IWD's decision on your PUA application, you have the right to appeal the decision by following the instructions on the decision.

- **If IWD finds you eligible for federal PUA benefits, you can use the PUA benefits to pay off the REGULAR (state) UI overpayment.**

- **If you are not approved for PUA, you are required to repay the benefits you've received so far.**